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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/345,269	06/30/1999	KEITH T. CHU	99RSS196	1021

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EXAMINER

EBRAHIMI DEHKORDY, SAEID

ART UNIT	PAPER NUMBER
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2626

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/345,269

Applicant(s)

CHU, KEITH T.

Examiner

Saeid Ebrahimi-dehKordy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Arguments

1. Applicant's arguments with respect to claim 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Terry et al (U.S. patent 6,587,473) In View of Bremer (U.S. patent 5,513,212) and further in view of Yoshida et al (U.S. patent 6,463,132)

Regarding claim 1,7,11 and 15 Terry et al disclose: A communications system configured for network latency recovery comprising: an Internet protocol network (please note Fig.1 column 5 lines 26-45) a calling modem coupled to the Internet protocol network (please note Fig.1 item 16, column 5 lines 11-20).

However Terry et al does not ^{clearly} ~~quite~~ disclose: the calling modem being operable to compare the network latency value to a network latency threshold to transmit a low speed modem connection selection signal if the network latency value is greater than the network latency threshold and to transmit a high speed modem connection selection signal if the network latency value is less than the network latency threshold and an answering modem coupled to the internet protocol network the answering modem being

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operable to receive the low speed modem connection signal and the high speed modem connection signal. On the other hand Bremer discloses: the calling modem being operable to compare the network latency value to a network latency threshold (please note column 5 lines 15-24) to transmit a low speed modem connection selection signal if the network latency value is greater than the network latency threshold (please note column 5 lines 25-27 where the threshold of the network is between 3000 s/sec and 2800 s/sec) and to transmit a high speed modem connection selection signal if the network latency value is less than the network latency threshold (please note column 6 lines 5-18) and an answering modem coupled to the internet protocol network the answering modem being operable to receive the low speed modem connection signal and the high speed modem connection signal (please note column 5 lines 15-30).

Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Terry et al's invention according to the teaching of Bremer, where Bremer in the same field of endeavor teaches the way latency (CNG) is compared in terms of s/second data for the purpose of low of high speed transmission.

Neither However Neither Terry et al nor Bremer disclose: the calling modems including a timer the timer being operable to store a network latency value. On the other hand Yoshida et al disclose: the calling modem including a timer the timer being operable to store a network latency value (please note column 19 lines 57-67 and column 20 lines 1-3).

Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Terry et al and Bremer's invention according to the teaching of

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Yoshida et al, where Yoshida et al in the same field of endeavor teach the way the communication data is being transmitted between the calling and receiving modem using the timer for the purpose of maintaining the rate of speed.

Regarding claim 2 Bremer disclose: The communications system of claim 1, further comprising: a calling facsimile terminal coupled to the calling modem and an answering facsimile terminal coupled to the answering modem (please note Fig.1 column 2 lines 35-62).

Regarding claim 3 Yoshida et al disclose: The communications system of claim 1, wherein a T.38 calling gateway includes the calling modem and a T.38 answering gateway includes the answering modem (please note column 6 lines 63-67 and column 7 lines 1-7).

Regarding claims 5,9,13 and 18 Yoshida et al disclose: The communications system of claim 1, wherein the low speed modem connection comprises a Group 3 connection on the other hand (please note column 6 lines 51-63).

Regarding claims 4,8,12 and 19 Yoshida et al discloses: The communications system of claim 1, wherein the high-speed modem connection comprises a V.8 modem connection (please note column 4 lines 47-58).

Regarding claims 6,10,14 and 21 Yoshida et al disclose: The communications system of claim 1, wherein the high-speed modem connection comprises a V.34 half-duplex connection (please note column 10 lines 52-57).

Regarding claim 16 Terry et al disclose: The method of claim 15, further comprising the step of: establishing a low speed modem connection if the network

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latency is greater than the network latency threshold (please note column 16 lines 20-41).

Regarding claim 17 Terry et al disclose: The method of claim 16, further comprising the step of: providing a low speed modem selection signal if the network latency is greater than the network latency threshold to indicate to perform the establishing a low speed modem connection step (please note column 16 lines 20-24)

Regarding claim 20 Terry et al disclose: The method of claim 15, further comprising the step of: providing a high speed modem selection signal to indicate to perform the continuing operation step if the network latency is less than the network latency threshold (please note column 16 lines 20-41).

Contact Information

- Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Saeid Ebrahimi-Dehkordy* whose telephone number is (703) 306-3487.

The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly Williams, can be reached at (703) 305-4863.

Any response to this action should be mailed to:

Assistant Commissioner for Patents
Washington, D.C. 20231

Or faxed to:

(703) 872-9306, or (703) 308-9052 (for **formal** communications; please mark

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"EXPEDITED PROCEDURE")


Or:

(703) 306-5406 (for *informal* or *draft* communications, please label
"PROPOSED" or "DRAFT")

Hand delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application should be
directed to the Group Receptionist whose telephone number is (703) 305-4750.

Saeid Ebrahimi-Dehkordy
Patent Examiner
Group Art Unit 2626
March 8, 2005



**KIMBERLY WILLIAMS
SUPERVISORY PATENT EXAMINER**